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assault and maltreat his guests. *Rahmel v. Lehndorf*, 142 Cal. 681. And Tennessee holds similarly that an innkeeper is not an insurer of the persons of his guests, but is merely to exercise reasonable care that his guest may not be injured by anything happening by his negligence. *Weeks v. McNulty*, 101 Tenn. 495. Nebraska, however, refuses the early English rule, and holds that the liability of an innkeeper for the safety of his guest should be the same as that of a carrier to a passenger. *Clancy v. Barker*, 98 N. W. 440. In several cases, not strictly analogous to the case in point but similar thereto, there is a tendency to hold that an innkeeper is liable for injuries to the person of the guest through acts of the servant. *Rommel v. Schambacher*, 120 Pa. St. 579; *Curran v. Olsen*, 88 Minn. 307.

MANDAMUS—TO ORDINARY—FUNDS WRONGFULLY DISBURSED.—*HUTCHESON v. MANSON*, ORDINARY, 62 S. E. 189 (GA.).—*Held*, that mandamus will lie to compel an ordinary to pay over money which by law it is his duty to pay for certain purposes, out of a particular fund even though that fund, which has come into his hands, has all been wrongfully disbursed and hence, is not in his possession.

A ministerial officer, into whose hands specific funds are intrusted, may be compelled by mandamus to disburse them in the manner prescribed by law. *People v. Edmonds*, 15 Barb. 529; *Ingerman v. State*, 129 Ind. 225. The duty is imperative upon him, not discretionary. *Baker v. Johnson*, 41 Me. 15; *People v. Fogg*, 11 Cal. 358. And the fact that the money authorized by legislature to be applied to one contingency has been exhausted in paying another, is no excuse. *People v. Stout*, 23 Barb. 338. There are decisions, however, holding that mandamus can be granted only to the extent of the funds remaining in the officer's hands, although he may have improperly disposed of a part of them which he should have turned over. *Duval County Com'rs v. Jacksonville*, 36 Fla. 196; *Board of Education v. Boyd*, 58 Mo. 276.

NEGLIGENCE—DANGEROUS PREMISES—LIABILITY OF OWNER.—*CAHILL v. E. B. & A. L. STONE & Co. ET AL.*, 96 PAC. 84.—*Held*, an owner of premises, over which there is a path used by the public with his knowledge and consent, who places a dangerous and concealed obstruction in the path, is liable for injuries sustained thereby to a person using the path.

The same rules apply to this case as to the "*Turn-Table Cases*." *Stout v. Railroad Co.*, 17 Wall. 657; *Koons v. Railway Co.*, 65 Mo. 592. The owner of a dangerous place or machine must guard the public from the danger attachel to it. *Young v. Harvey*, 16 Ind. 314. In *Beck v. Porter*, 68 N. Y. 283, it was held that an owner of land may be liable, who makes an excavation so near the highway as to be dangerous to travelers. And some cases hold that it makes no difference how great the distance is from the highway if the excavation is dangerous to the public. *City of Norwich v. Breed*, 30 Conn. 535. The cases *contra* rest on the theory that the owner owes no duty to the public. *Cusick v. Adams*, 115 N. Y. 55.

OFFICERS—RESIGNATION—WITHDRAWAL.—*STATE v. MURPHY*, 97 PAC. 391 (NEV.).—*Held*, that a sheriff who presented to the board of county

commissioners his resignation, to take effect on a designated future day, could before such day withdraw it, notwithstanding the board's acceptance thereof. *Talbot, C. J., dissenting.*

A resignation cannot be withdrawn after it is complete. *State v. Augustine*, 113 Mo. 21. At common law a resignation amounts to nothing until it has been accepted by the proper authority. *Hoke v. Henderson*, 4 Dev. (N. C.) 29. But in those jurisdictions which have not adopted the common law rule, as Alabama, Indiana, California, and Nevada, the acceptance or rejection of a resignation in no way affects the resignation and the appointee may withdraw his resignation at any time before it becomes complete. *Parmater v. State*, 102 Ind. 90. Where the resignation is unconditional and has been transmitted to the proper authority, it cannot be withdrawn as it becomes effective immediately. *State v. Fitts*, 49 Ala. 402; *Mimmack's Case*, 97 U. S. 430. But a resignation expressed to take effect at a future date may be withdrawn at any time before the time specified. *State v. McGrath*, 64 Mo. 139.

RAILROADS—INJURIES TO PERSONS AT CROSSINGS—DUTY TO STOP, LOOK, AND LISTEN.—*CABLE V. SPOKANE & INLAND EMPIRE R. R. Co.*, 97 PAC. 744 (WASH.).—*Held*, that a failure of a person to stop, look, and listen before crossing a railroad constituted negligence, and would prevent him from recovering damages for injuries received.

The prevailing doctrine on this point is that a person approaching a railroad must stop, look, and listen before crossing. *Groton v. The Erie Railway Co.*, 45 N. Y. 660; *Allen v. Maine Central R. Co.*, 82 Me. 111. And that a failure to do so constitutes negligence *per se*. *Aiken v. Penn. R. Co.*, 130 Pa. St. 380. However, it has been held in some courts that there is no such duty. *C. T. & N. W. R. Co. v. Bush*, 12 Tex. Civ. App. 291. And that a failure to do so does not necessarily constitute negligence so as to bar a recovery against the defendant. *T., St. L. & K. C. R. R. Co. v. Cline*, 135 Ill. 41. Nor is negligence attributable to one for attempting to drive over a railroad crossing, without stopping and looking, when by doing so he could not have seen the train which caused the injury. *Pithy v. Hannibal & St. Jo. R. R. Co.*, 88 Mo. 306. *Contra: Fletcher v. Fitchburg R. Co.*, 149 Mass. 127.

SALES—CONDITIONAL PURCHASER—CONDITIONAL SALE—PURCHASE FROM VENDEE.—*LOCKWOOD BROS. v. FRISCO LUMBER Co.*, 97 PAC. 522 (OKL.).—*Held*, that simply intrusting the possession of chattels to another by the owner under a conditional executory contract of sale is sufficient to estop the owner from setting up title thereto against an innocent purchaser thereof for value and without notice of the condition from the person so intrusted.

The universal and fundamental principle of our law of personal property is, that no man can be divested of his property without his own consent; and, consequently, that even the honest purchaser under a defective title cannot hold as against the true proprietor. *Mechem Sales*, § 155. So the weight of authority is that a conditional purchaser of chattels cannot transfer them so as to give his vendee a good title as against